IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 27324 of 2006(C)

PETITIONER:

P.J. JAMES, S/O. OUSEPH,
PALLIYAN HOUSE, KARUKUTTY VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.KURIAN ANTONY EDASSERY
SRI.BOSE K.THACHIL
SMT.ANN EMIL JOSEPH

RESPONDENTS:

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1. SECRETARY, KARUKUTTY GRAMA PANCHAYATH
KARUKUTTY, ALUVA TALUK,
ERNAKULAM DISTRICT.

2. CIRCLE INSPECTOR OF POLICE,
ANGAMALY, ERNAKULAM DISTRICT.

*** ADDL. R3 IMPLEADED.**

3. SRI.K.S.SOURIAR @ GABRIEL, S/O.SOURIAR,
KARAPPILLY HOUSE, KARUKUTTY P.O.,

*** IS IMPLEADED VIDE ORDER DT.11.12.06.**

BY ADV. SRI.V.S.CHANDRASEKHARAN
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/02/2007, ALONG WITH WPC NO. 28286 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.27324/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RECEIPT NO.44 DT. 4.3.06 ISSUED BY THE 1ST RESPONDENT TOWARDS THE LICENSE FEE REMITTED BY THE PETITION FOR THE PERIOD 2006-07.

EXT.P2:- COPY OF THE LICENSE ISSUED BY THE DY.CONTROLLER EXPLOSIVES DT.11.10.06 VALID UP TO 31.3.2008.

EXT.P3:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.22.6.06.

EXT.P4:- COPY OF THE PERMIT ISSUED BY THE DEPT. OF EXPLOSIVES TO SRI.K.D.VARKEY.

EXT.P5:- COPY OF THE NOTICE DT.10.10.06 LEFT AT THE RESIDENCE OF THE PETITIONER ON 11.10.06 BY THE 1ST RESPONDENT.

E.XT.P6a:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY , GOVERNMENT OF KERALA DT.5.2.97.

EXT.P6b:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.5.7.2000.

EXT.P6(c:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.12.12.01.

EXT.P6d:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.21.4.04.

EXT.P6e:- COPY OF THE PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.23.5.05.

EXT;P7:- COPY OF THE LICENSE ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT OF KERALA DT.15.11.06.

EXTP8:- COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER DT.15.12.06.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE SKETCH AND REPORT PREPARED BY THE LD CLERK OF THE 1ST RESPONDENT.

EXT.R1(b):- STOP MEMO TO THE PETITIONER D.T.10.10.06.

/TRUE COPY/

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 27324 & 28286 OF 2006

Dated this the 28th day of February, 2007

JUDGMENT

The petitioner in WP(C) No.27324 of 2006 claims that he has been engaged in the business of quarrying for the last 15 years within the area of the Karukutty Grama Panchayat had properties owned by him and his wife. He has filed this Writ Petition arraying the Secretary of the Karukutty Grama Panchayat and the Circle Inspector, Angamaly as respondents seeking quashment of Ext.P5 notice issued by the 1st respondent-Panchayat directing him to stop the quarrying operations conducted by him. The other reliefs sought for by him in the Writ Petition are a direction to the 1st respondent to give him an opportunity of being heard before passing orders on the complaints, if any, filed against him and for an order restraining the 2nd respondent and his subordinate from taking any action against him and his workmen from carrying out their legally permitted quarrying operations.

2. Sri.K.S. Shourya, who is the petitioner in WP(C) No.28286 of 2006 has got himself impleaded as additional respondent No.3. In WP (C) No.28286 of 2006 the respondents are the District Collector; the Panchayat; the Circle Inspector of Police; Sri.James-the petitioner in WP(C) No.27324 of 2006 and Sri.Varghese, brother of Sri.James. In

this case, as directed by me, the Geologist and the Director of Mining and Geology Department and also the Director of Mine Safety were impleaded as additional respondents 6 to 8.

3. Ext.P1 produced along with WP(C) No.27324 of 2006 is copy of the licence fee receipt dt.04.03.06 issued by the Panchayat to the petitioner therein for the period 2006-07. Ext.P2 is copy of the licence issued by the Deputy Controller of explosives dt.11.10.06 valid up to 31.03.08 to the petitioner. Ext.P3 is copy of the permit dt.22.06.06 issued to the petitioner by the Department of Mining and Geology. This is valid up to 21.10.06. Petitioner submits that he has applied for renewal of the permit and since he has not been violating the terms of the permit so far, the renewal is likely to be granted. The petitioner submits that Sri.K.D. Varkey, who has been engaged by the petitioner for short-firing in the quarry is having a shot-firer's permit and certificate is issued to him from the Department of Explosives, Ext.P4, produced along with the Writ Petition is copy of that permit issued to Sri.K.D. Varkey. He claims that he has been engaging workers, peacefully operating quarry operations without generating any pollution. It is at that juncture that the 1st respondent has issued Ext.P5 stop memo dt.11.10.06. Contending that issuance of Ext.P5 without hearing him and the demand for immediate closure of the quarry is violative of the

basic principles of natural justice and is in violation of the petitioner's fundamental rights, he has filed this Writ Petition seeking the reliefs already indicated.

4. The petitioner in WP(C) No.28286 of 2006 submits that he is the absolute owner and in possession of 26.10 cents in Survey No.919/1 of Karukutty Village. In the house situated in that property he is residing with family which consists of several persons including children and grandchildren. The property of the petitioner is situated on the northern side of Pavakkattukunnu-Mambra road and on the immediate southern side of the said road just opposite of the petitioner's property is situated the property belonging to Sri.James and his brother, Sri.Varghese. It is submitted that Sri.James is a political leader and was the President of the 2nd respondent-Panchayat during period from 2000-05. Sri.James and Sri.Varghese have been conducting granite quarrying in their property for the past 5 years without the requisite statutory licences and permits. Initially the quarry was being conducted away from the road and therefore it was not greatly affecting the petitioner. But at present quarrying being done hardly 6 meters away from the road. Thus the distance between the quarry to the petitioner's house has become reduced to just 10 meters. Quarrying is being done using explosives. Using of explosives during quarrying, causes tremendous vibrations

and cracks even on the concrete wall of the petitioner's house. Granite pieces are being thrown towards the petitioner's property during the explosions posing great threat to the lives of the petitioner and his family members. It is further alleged that during the past few months' respondents 4 and 5 are attempting to remove red earth from their property. Red earth mining is also attempted to be done in a massive scale. If this red soil removal is allowed to continue, the same will cause damages to Pavakkattukunnu-Mambra road since earth is being removed from lands adjacent to the road. When Pooja Holidays commenced on 01.10.01, respondents 4 & 5 attempted to remove red earth from their property in a massive scale. The petitioner's son and neighbour submitted complaints before respondents 2 & 3. Ext.P1 is copy of that complaint. Due to Ext.P1 complaint sand mining from the property of respondents 4 & 5 could be prevented. But later, taking the advantage of the holidays which commenced from 21.10.06, respondents 4 & 5 again attempted to remove red earth from their property. This time the petitioner's son and other respondents submitted Ext.P2 complaint before the 3rd respondent. Due to the intervention of the 3rd respondent, illegal sand mining could be prevented. As regards the illegal quarrying also, complaint has been submitted and Ext.P3 is copy of the complaint dt.16.01.06. On Ext.P3

no effective action has been taken, Ext.P4 photographs are relied on to show the manner in which quarrying of red earth is being conducted by respondents 4 & 5. Petitioner apprehends that continuance of quarrying and red earth mining if not prevented, by effective action, will be highly injurious and have filed this Writ Petition on various grounds seeking the following relief:

i) issue a writ of mandamus commanding respondents 1 to 3 to stop the conduct of quarrying by respondents 4 & 5 in Re-Survey No.158/11 of Karukutty Village forthwith;

5. The Geologist who is the additional 6th respondent in WP(C) No.28286 of 2006 has filed a statement in that case. It is conceded therein that the quarrying permit has been granted to the 4th respondent under the provisions of the Kerala Minor Mineral Concession Rules 1967 and that the said permit is valid upto 14.03.07. The Geologist inspected the site on 04.01.2007 for verifying the correctness of the allegations in the Writ Petition. Even though the petitioner's house is more than 50 meters away from the area where permission has been granted to the 4th respondent, an attempt of removal of surface soil as part of elaborate quarry operation was seen made by the 4th respondent and it was noticed at the time of inspection from the Office of the Geologist that red earth is being removed by the 4th respondent within a distance of 15 meters from the petitioner's house. It is also submitted

that there is one residential building within 50 meters from the permitted area. Permit holder is directed to obtain consent from the owner of the house. At present the permitted area is virgin and the 4th respondent is yet to commence quarrying operations. Further actions will be taken by the respondent only after considering the grievances of the petitioner and other residents of the area.

5. Sri.P.J.James the petitioner in WP(C) No.273264 of 2006 has filed a counter affidavit in WP(C) No.28286 of 2006. He contends that he has reason to believe that the Writ Petitioner is before this Court at the instance of the 2nd respondent-Panchayat and its present governing body to stop the quarrying in his premises based on political reasons it is alleged that members of the Panchayat lead by its present President are trying to gain political advantage by mis-using their position. Once the present Government in the Panchayat came to power they are trying to create problems for Sri.James, the former President under one pretest or other. He denies all the allegations in the Writ Petition and relies on Ext.R4(a) sketch prepared by the village officer to show that the relative distance of the quarry from the neighbouring residents is not as the Writ Petitioner claims and that the quarry is situated at safe distance from the neighbouring houses. Denying the grounds in the Writ Petition that the petitioners does not have any licence for the

operation, it is contended that all the requisite licences and permits are with the respondents and that they are produced as Exts.P1 to P4 in WP(C) No.27324 of 2006. It is submitted that Sri.K.D. Varkey has a blaster licence in his name which is valid up to 09.02.2010. Sri.James has paid licence fee for the period 2006-07 to the respondent-Panchayat. On 15.11.06 permit from the Geologist for doing mining up to 14.3.07 has been issued and Ext.R2(e) is copy of the said permit.

6. The Panchayat has filed a counter affidavit in WP(C) No.28286 of 20006 supporting the case of the Writ Petitioner. It is submitted that the Panchayat has already taken necessary steps for stopping the illegal quarrying operations in the Panchayat area. Stop memo was issued to Sri.P.J. James and Sri.P.J. Varghese as they had violated the provisions of Section 220(d) of the Panchayat Raj Act. Section 220(d) provides that neither respondents 4 & 5 nor any other person have any manner of right whatsoever to conduct quarrying of stone, earth, ruble or other materials from any place within 20 meters of a public road and relies on Ext.R2(a) sketch prepared by a lower division clerk of the Panchayat to show that actual quarrying is done by Sri. Sri.P.J. James within a distance of just 9 meters from the road. Ext.R2(b) is a similar sketch prepared in respect of the quarrying of Sri.P.J. Varghese brother of Sri.P.J. James. This will also show that quarrying is done within 20

meters. ON the basis of the reports submitted by the lower division clerk stop memos were issued to both Sri.P.J. James and Sri.P.J. Varghese and Ext.R2(d) is copy of the stop memo issued to Sri.P.J. James. It is then contended that neither Sri. James nor Sri.Varghese has obtained licence for conducting quarrying operations and blasting operations. Licence issued by the Geology Department was issued without making any proper enquiry. As per the quarrying permit Sri. Sri. James and Sri.Varghese have no right to start quarrying operations before obtaining licence from Panchayat. Under the permit, they have no right to conduct quarrying work within 75 meters of public road and they have no right to conduct quarrying beyond a depth of 20 feet in their property. It is alleged that Sri.P.J. James and Sri.P.J. Varghese have conducted quarrying upto a depth of 20 feet. Sri.James is conducting quarrying within 9 meters of the Panchayat road while Sri.Varghese is conducting quarrying within just 70 cms from the Panchayat road. They have already removed more quantity of rock/stones from their property by violating the terms of the quarrying permits. The quarrying work of respondents 4 & 5 is totally illegal. They have not obtained blasters' certificate from the Director of Mines, Karnataka. They have not engaged any blaster with blasters' certificate.

7. In WP(C) 27324 of 2006, a counter affidavit has been filed by

the Panchayat to which a detailed reply affidavit has been filed by the Writ Petitioner Sri.P.J. James. Along with that reply affidavit, he has produced Ext.P6(a) copy of the permit issued by the Department of Mining and Geology, Government of Kerala dt.15.2.97. Ext.P6(b) is copy of the permit issued by the Department of Mining and Geology on 5.7.2000 Ext.P6(c) copy of the permit issued by the Department of Mining and Geology on 12.12.01. Ext.P6(d) copy of the similar permit dt.21.04.04 and Ext.P6(e) is copy of the similar permit dt.23.05.06 and Et.P7 is copy of the licence issued by the Department of Mining and Geology on 15.11.06. Ext.P8 is copy of the location sketch showing the area where the quarry is presently situated is also produced.

8. Very elaborate submissions were addressed before me by the learned counsel for the petitioner in WP(C) No.27324 of 2006, Sri.Kurian Antony Edassery, Sri.PhilipT. Varghese, counsel for the petitioner in WP(C) No.28286 of 2006. Heard Sri.V.S. Chandrasekharan, Standing Counsel for the Karukutty Gama Panchayat and also the learned Government Pleader who appeared for the authorities the Geologist and the Director of Mining and Geology.

9. Even though the learned counsel drew my attention to the relevant statutory provisions such as Section 220(d) of the Panchayat Raj Act, and the various documents placed o record, I do not think that it

is necessary to consider all their contentions and to decide the issue on merits. I am informed that during the pendency of this Writ Petition, the Panchayat has issued an order rejecting the applications submitted by the petitioner in WP(C) No.27324 of 2006 for licence. The Principles laid down by this Court in the judgment of **Rajmohan Nair V. State of Kerala** [ILR 1997(1) 268] vide paragraph 58 of that judgment will be noticed and I hold that the petitioner Sri.P.J. James is bound to take a licence in form No.22 for obtaining and using explosives for blasting purposes in his quarry and he is obliged to engage a qualified blaster as defined in the Metaliferous Mines Regulations who is entitled to supervise the blasting operations in the quarry. Sri.K.D. Varkey who has been presently engaged has got only a shot firer's permit. He will not be able to conduct blasting or to supervise the blasting operations in the quarry. In view of the conceded position that Sri.K.D. Varkey has got only shot firer's licence and does not have a blaster's licence or certificate, I am of the view that the petitioner will be bound to engage a qualified blaster in his quarry without which he cannot have the permission to carry on blasting operations which are absolutely necessary for quarrying. Since the Panchayat has already rejected his application for licence I relegate the petitioner to the Tribunal for local Self Government Institutions by filing an appeal against the order

rejecting his licence application. If the petitioner, Sri.James prefers an appeal within two weeks of his receiving a copy of this judgment arraying the petitioner in WP(C) No.28286 of 2006 apart from the Panchayat as respondent, the Tribunal will entertain that appeal, dispose of the same in accordance with law at the Tribunal's earliest. I direct continuance, of status quo obtaining as on today as regards the quarry for a period of one more month from today. The above direction will continue further, only if the petitioner engages a qualified blaster. It is made clear that continuance of the direction for maintenance of status quo will be subject to the final decision taken by the Tribunal on the appeal to be preferred by the petitioner, Sri.James. It is open to the Panchayat and also to the petitioner in WP(C)No.28286 of 2006 to request for an early disposal of the said appeal and it is open to either of the parties to apply to the Tribunal for procurement of reports on the basis of the local inspection through an Advocate Commissioner to be deputed by the Tribunal, so that such reports can also be considered by the Tribunal while deciding the appeal.

PIUS C. KURIAKOSE, JUDGE

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